

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DOTEXAMDR, PLLC,)	
)	
Plaintiff,)	No. 3:20-cv-00698-MPS
)	
v.)	
)	ANSWER AND AFFIRMATIVE
HARTFORD UNDERWRITERS)	DEFENSES OF DEFENDANT
INSURANCE COMPANY,)	TO PLAINTIFF’S SECOND
)	AMENDED COMPLAINT
Defendant.)	
)	

Defendant Hartford Underwriters Insurance Company (“Hartford” or “Defendant”), by and through its counsel, hereby answers and responds to DOTEXAMDR, PLLC’s (“Plaintiff’s”) Second Amended Complaint (“Complaint”).

NATURE OF THE CASE¹

1. Defendant admits that it and Plaintiff entered into a contract of insurance, Business Owner’s Policy No. 76 SBW AE4ZND effective November 21, 2019 through November 21, 2020 (the “Policy”), and that Plaintiff seeks declaratory relief in this action. Defendant denies that Plaintiff is entitled to any relief whatsoever from Defendant.

2. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 2 as stated, and therefore denies same.

¹ For ease of reference, this Answer uses the headings and subheadings that Plaintiff included in the Complaint. The use of such headings is not an admission by Hartford of the truth of any allegations contained in the headings or subheadings. Hartford denies any suggestions implied by the headings and subheadings.

3. Defendant denies the allegations in Paragraph 3. The terms of the Policy speak for themselves.

4. Paragraph 4 states a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 4, including that Plaintiff is entitled to declaratory relief or to any relief whatsoever from Defendant.

JURISDICTION

5. Paragraph 5 states legal conclusions to which no response is required. To the extent a response is required, Defendant admits it is a citizen of Connecticut and denies that Plaintiff is entitled to any relief from Defendant. To the extent further response is required, Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the remaining allegations in Paragraph 5, and therefore denies same.

6. Paragraph 6 states legal conclusions to which no response is required. To the extent a response is required, Defendant admits its principal place of business is within Connecticut and admits that it is subject to the general personal jurisdiction of this Court.

7. Paragraph 7 states legal conclusions to which no response is required. To the extent a response is required, Defendant admits that it is a citizen of Connecticut and that venue is proper in the United States District Court for the District of Connecticut. Defendant denies the remaining allegations in Paragraph 7 given their vagueness and ambiguity.

PARTIES

8. Upon information and belief, Defendant admits that Plaintiff's chiropractic practice is located at 5646 Milton Street, Suite 326, Dallas, Texas 75206. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the remaining allegations in Paragraph 8, and therefore denies same.

9. Defendant admits that it is an insurance carrier with its principal place of business in Connecticut and that it entered into the Policy with Plaintiff, the terms and conditions of which speak for themselves. To the extent the allegations in Paragraph 9 are inconsistent with the terms of the Policy, Defendant denies them.

10. Defendant admits that it entered into a contract of insurance with Plaintiff and issued the Policy to Plaintiff, the terms and conditions of which speak for themselves. Defendant denies that the policy number of the Policy is 20 UUN UX 2005. To the extent the allegations in Paragraph 10 are inconsistent with the terms of the Policy, Defendant denies them.

11. Defendant admits the Policy is in effect. The terms of the Policy speak for themselves. To the extent the allegations in Paragraph 11 are inconsistent with the terms of the Policy, Defendant denies them.

12. Defendant admits that Plaintiff submitted a claim for coverage to Defendant on March 25, 2020. Defendant admits that it sent a letter to Plaintiff denying Plaintiff's claim on March 26, 2020, and refers to the letter for its contents. To the extent the allegations in Paragraph 12 are inconsistent with the content of the letter, Defendant denies them. Defendant denies the remaining allegations of Paragraph 12 due to their vagueness and ambiguity.

FACTUAL BACKGROUND

I. Insurance Coverage

13. Defendant admits that Plaintiff paid premiums for the Policy. The terms of the Policy speak for themselves. To the extent the allegations in Paragraph 13 are inconsistent with the terms of the Policy, Defendant denies them.

14. The terms of the Policy speak for themselves. To the extent the allegations in Paragraph 14 are inconsistent with the terms of the Policy, Defendant denies them.

15. The terms of the Policy speak for themselves. To the extent the allegations in Paragraph 15 are inconsistent with the terms of the Policy, Defendant denies them.

16. The terms of the Policy speak for themselves. To the extent the allegations in Paragraph 16 are inconsistent with the terms of the Policy, Defendant denies them.

17. Paragraph 17 states a legal conclusion to which no response is required. To the extent a response is required, Defendant admits that the Policy includes a Virus Exclusion but denies the remaining allegations in Paragraph 17.

18. Defendant admits that Plaintiff paid premiums for the Policy. Defendant denies the remaining allegations in Paragraph 18.

II. The Coronavirus 2-10 Pandemic

19. Paragraph 19 states legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 19.

20. Paragraph 20 purports to summarize information purportedly contained on a website, the content of which speaks for itself. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 20, and therefore denies them.

21. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 21, and therefore denies them. To the extent Paragraph 21 purports to explain guidance of the CDC, that guidance speaks for itself.

22. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 22, and therefore denies them.

23. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 23, and therefore denies them.

III. Civil Authority

24. Defendant admits that Texas Governor Greg Abbott issued a proclamation on March 13, 2020 in connection with the COVID-19 pandemic, which speaks for itself. To the extent the allegations in Paragraph 24 are inconsistent with the terms of the proclamation, Defendant denies them.

25. Defendant admits that John W. Hellerstedt, M.D., Commissioner of the Texas Department of State Health Services, issued a Declaration of a Public Health Disaster on March 19, 2020, which speaks for itself. To the extent the allegations in Paragraph 25 are inconsistent with the terms of the declaration, Defendant denies them.

26. Defendant admits that Dallas County Judge Clay Jenkins issued a “Stay Home Stay Safe” Order on March 22, 2020. To the extent the allegations in Paragraph 26 are inconsistent with the terms of the order, Defendant denies them.

27. Defendant admits that Texas Governor Greg Abbott issued Executive Order GA 14 on March 31, 2020, which speaks for itself. To the extent the allegations in Paragraph 27 are inconsistent with the terms of the executive order, Defendant denies them.

28. Defendant admits that Dallas County Judge Clay Jenkins made remarks to the press in a briefing on April 2, 2020, and refers to his remarks for their contents. To the extent the allegations in Paragraph 28 are inconsistent with the remarks, Defendant denies them.

29. Defendant admits that Plaintiff submitted a claim for coverage to Defendant on March 25, 2020. Defendant is without knowledge or information sufficient to form a reasonable

belief regarding the truth and accuracy of the remaining allegations in Paragraph 29, and therefore denies them.

30. Defendant admits that President Trump made remarks to the press in a briefing on April 10, 2020, and refers to his remarks for their contents. Defendant denies the remaining allegations in Paragraph 30.

31. Defendant admits that President Trump made remarks to the press in a briefing on April 10, 2020, and refers to his remarks for their contents. Defendant denies the remaining allegations in Paragraph 31.

32. Defendant denies the allegations in Paragraph 32.

IV. Impact on Plaintiff

33. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 33, and therefore denies them.

34. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 34, and therefore denies them.

35. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 35, and therefore denies them.

36. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 36, and therefore denies them.

37. Defendant is without knowledge or information sufficient to form a reasonable belief regarding the truth and accuracy of the allegations in Paragraph 37, and therefore denies them.

38. Paragraph 38 states legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 38.

39. Paragraph 39 states legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 39 and denies that Plaintiff is entitled to any relief from Defendant.

CAUSE OF ACTION

DECLARATORY RELIEF

40. Defendant restates and incorporates by reference Defendant's responses to Paragraphs 1-39, as if fully set forth herein.

41. Defendant admits that the statement in Paragraph 41 is an incomplete quote from the Declaratory Judgment Act, 28 U.S.C. § 2201(a), and refers to the statute for the full text of the provision.

42. Paragraph 42 states legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 42 and denies that Plaintiff is entitled to any relief whatsoever from Defendant.

43. Paragraph 43 contains a declarative description of the relief sought by Plaintiff to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 43 and denies that Plaintiff is entitled to any relief whatsoever from Defendant.

44. Paragraph 44 contains a declarative description of the relief sought by Plaintiff to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 44 and denies that Plaintiff is entitled to any relief whatsoever from Defendant.

45. Paragraph 45 contains a declarative description of the relief sought by Plaintiff to which no response is required. To the extent a response is required, Defendant denies the allegations of Paragraph 45 and denies that Plaintiff is entitled to any relief whatsoever from Defendant.

The “Wherefore” clauses and subparagraphs that follow do not allege any facts and therefore no response is required. To the extent a response is required, Defendant denies that Plaintiff is entitled to the requested relief or any other relief from Defendant. To the extent any further response is required, Defendant denies the allegations contained in the “Wherefore” clause and the subparagraphs that follow.

DEFENDANT’S AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses and reserves all rights to amend or supplement these defenses when and if amended or additional defenses become appropriate and/or available in this action. The statement of any defense herein does not assume the burden of proof for any issue to which the applicable law places the burden of proof on Plaintiff.

FIRST AFFIRMATIVE DEFENSE (Failure to state a claim)

The Complaint fails to state a cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE
(Virus Exclusion)

The Policy contains an exclusion titled “Virus or Bacteria.” Form SP 00 00 10 18 at 5. Plaintiff’s claims may be barred or limited, in whole or in part, to the extent that the alleged loss or damage, if any, is excluded by the Virus or Bacteria exclusion.

THIRD AFFIRMATIVE DEFENSE
(Virus Limited Additional Coverage)

The Policy contains a provision titled “Limited Coverage For ‘Fungi’, Wet Rot, Dry Rot, Bacteria and Virus.” Form SP 30 17 10 18 at 1-2. Plaintiff’s claims may be barred or limited by the time period and/or sub-limits applicable to the Limited Coverage for “Fungi”, Wet Rot, Dry Rot, Bacteria and Virus provision.

FOURTH AFFIRMATIVE DEFENSE
(Waiver, estoppel, and unclean hands)

Plaintiff’s claims may be barred or limited, in whole or in part, by the doctrines of waiver, estoppel, and/or unclean hands.

FIFTH AFFIRMATIVE DEFENSE
(Merger clause)

The Policy is the sole agreement between the parties, and Defendant did not breach any Policy terms.

SIXTH AFFIRMATIVE DEFENSE
(Terms of the Policy are controlling)

Defendant’s obligations in the Policy are defined, limited, and controlled by the terms and conditions of the Policy, including, but not limited to, the coverages, limits, sub-limits, exclusions, endorsements, conditions, and all other terms set forth therein.

SEVENTH AFFIRMATIVE DEFENSE
(Failure to comply with Policy)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent that Plaintiff failed to perform its obligations under the Policy.

EIGHTH AFFIRMATIVE DEFENSE
(Losses not covered by Policy)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent Plaintiff seeks relief for damages or losses not covered by the Policy.

NINTH AFFIRMATIVE DEFENSE
(Two or More Coverages)

The Policy contains a General Condition titled "Insurance Under Two Or More Coverages." Form SC 00 00 10 18 at 2. Plaintiff's claims are limited, in whole or in part, to the extent the Insurance Under Two Or More Coverages provision is applicable to the loss or damage.

TENTH AFFIRMATIVE DEFENSE
(Other insurance)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent other insurance or contributing insurance is applicable to the alleged loss or damage.

ELEVENTH AFFIRMATIVE DEFENSE
(Failure to exhaust other insurance coverage)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent Plaintiff has not demonstrated exhaustion of coverage for losses under other more specific insurance policies.

TWELFTH AFFIRMATIVE DEFENSE
(Deductibles, Sub-limits)

Plaintiff's claims may be barred or limited, in whole or in part, by applicable deductibles, retentions, and/or limits and sub-limits (including per occurrence limits) contained in the Policy.

THIRTEENTH AFFIRMATIVE DEFENSE
(Outside Period of Restoration)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent Plaintiff seeks to recover for loss incurred outside the Period of Restoration.

FOURTEENTH AFFIRMATIVE DEFENSE
(Law or public policy)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent coverage is prohibited by express provisions of law or public policy.

FIFTEENTH AFFIRMATIVE DEFENSE
(Conditions precedent and subsequent)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent that conditions precedent and subsequent to the availability of insurance coverage under the Policy have not been satisfied.

SIXTEENTH AFFIRMATIVE DEFENSE
(Offset)

Defendant's obligation to Plaintiff, if any, is subject to offset for recoveries by Plaintiff from other persons or entities.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Valuation Clause)

Plaintiff's claims may be limited, in whole or in part, by the valuation provisions in the Policy.

EIGHTEENTH AFFIRMATIVE DEFENSE

(No "direct physical loss")

Plaintiff's claims may be barred or limited, in whole or in part, to the extent there is no direct physical loss of or direct physical damage to covered property.

NINETEENTH AFFIRMATIVE DEFENSE

(No "direct physical loss" – Business Interruption)

Plaintiff's claims may be barred or limited, in whole or in part, because the interruption to Plaintiff's business, if any, was not due to "direct physical loss or direct physical damage to property at the 'scheduled premises'... caused by or resulting from a Covered Cause of Loss." Form SP 30 13 10 18 at 1.

TWENTIETH AFFIRMATIVE DEFENSE

(Covered Cause of Loss)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent Plaintiff cannot demonstrate a Covered Cause of Loss, as defined in the Policy. Form SP 00 00 10 18 at 2.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Ordinance or Law Exclusion)

The Policy contains an exclusion titled "Ordinance or Law." Form SP 00 00 10 18 at 5. Plaintiff's claims may be barred or limited, in whole or in part, to the extent that the alleged loss or damage, if any, is excluded by the Ordinance or Law exclusion.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Ordinance or Law-Limits)

The Policy contains a Coverage Extension provision for “Ordinance or Law.” Form SP 30 11 10 18 at 1-3. Plaintiff’s claims do not fit within the Coverage Extension and also may be barred or limited, in whole or in part, by the time period and/or sub-limits applicable to the Ordinance or Law provision.

TWENTY-THIRD AFFIRMATIVE DEFENSE
(Civil Authority)

The Policy contains a Coverage Extension provision for “Business Income for Civil Authority Actions.” Form SP 30 19 10 18 at 1-2. Plaintiff’s claims may be barred, in whole or in part, to the extent that Plaintiff cannot satisfy the requirements of the Business Income for Civil Authority Actions provision (a) that access to Plaintiff’s premises be prohibited by the order of civil authority, and (b) that the order be issued as the result of a Covered Cause of Loss.

TWENTY-FOURTH AFFIRMATIVE DEFENSE
(Dependent Properties-Limits)

The Policy contains a Coverage Extension provision for “Business Income From Dependent Properties.” Form SP 30 14 10 18 at 1-3. Plaintiff’s claims may be barred or limited, in whole or in part, by the time period and/or sub-limits, if any, applicable to the Business Income From Dependent Properties provision.

TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Extended Business Income-Limits)

The Policy contains a Coverage Extension provision for “Extended Business Income.” Form SP 30 13 10 18 at 2. Plaintiff’s claims may be barred or limited, in whole or in part, by the time period and/or sub-limits, if any, applicable to the Extended Business Income provision.

TWENTY-SIXTH AFFIRMATIVE DEFENSE
(Failure to mitigate)

Plaintiff's claims may be barred or limited, in whole or in part, to the extent that Plaintiff failed to mitigate damages, if any. To the extent Plaintiff failed to take reasonable steps to mitigate Plaintiff's alleged damages, if any, Plaintiff should be denied any recovery in this action.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE
(Reservation of future defenses)

Plaintiff's claims may be barred or limited, in whole or in part, by additional defenses that cannot now be articulated because of the generality of the pleadings, and other presently undeveloped information. Accordingly, Defendant reserves the right to supplement the foregoing defenses as may appear as this case progresses to the full extent permissible by law.

PRAYER FOR RELIEF

WHEREFORE, based on the above answers and defenses, Defendant respectfully requests that the Court enter an order:

- i. denying Plaintiff the relief sought in the Complaint;
- ii. dismissing the Complaint in its entirety with prejudice;
- iii. awarding Defendant its costs and expenses, including its attorneys' fees; and
- iv. awarding Defendant such other and further relief as the Court deems just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Defendant hereby demands a trial by jury.

Dated this 7th day of July.

Respectfully submitted,

/s/ Gerald P. Dwyer, Jr.

Gerald P. Dwyer, Jr.

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Pro Hac Vice Application Forthcoming

*Attorneys for Defendant Hartford Underwriters Insurance
Company*

CERTIFICATE OF SERVICE

I certify that a copy of the ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT TO PLAINTIFF'S SECOND AMENDED COMPLAINT has been furnished to all counsel of record by ECF on July 7, 2020.

/s/ Gerald P. Dwyer, Jr.
